

Judge: Marc Barreca

Chapter 7

Location: U.S. Bankruptcy Court

Location: Via ZoomGov

Date of Hearing: March 22, 2023

Time: 10:00AM

Response Date: March 15, 2023

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

In re:

Darrin Lenald Cooper,

Debtors

) No.: 20-11937-MLB

) Chapter 7

) MOTION FOR AN ORDER TO APPEAR
) AND SHOW CAUSE WHY CREDITOR
) THE SOCIAL SECURITY
) ADMINISTRATION SHOULD NOT BE
) HELD IN CONTEMPT FOR VIOLATING
) THE AUTOMATIC STAY 11 U.S.C. § 362

Now comes Debtor, Darrin Lenald Cooper, by and through his attorney, Rachel Edmiston, and respectfully requests this Court to compel an officer for the creditor, the Social Security Administration, ("Creditor"), to appear and show cause why Creditor should not be found in contempt of court for violating the bankruptcy discharge, 11 U.S.C. §524(a)(2), by continuing to recoup Debtor's discharged pre-petition Social Security overpayment from his current payments.

FACTS

Prior to filing a Chapter 7 bankruptcy, Debtor applied for Social Security benefits. When Social Security calculated how much he should receive, they did not take into account the worker's compensation payments Debtor was receiving from Boeing. Social Security was aware of the worker's compensation payments, they just did not include that amount when they calculated how

MOTION TO SHOW CAUSE

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1 much he should get from Social Security. Debtor was approved for Social Security benefits and
2 Social Security then sent Debtor a check that covered payments he should have received from the
3 time he became disabled to that point. This resulted in an overpayment of approximately \$77,000.

4 Debtor filed a Chapter 7 bankruptcy on July 21, 2020. The overpayment was not listed
5 because Debtor was not sure that he had been overpaid and Social Security had not indicated what
6 the amount of the overpayment was or that they would try to collect it. Debtor received his
7 discharge on October 21, 2020. He sent Social Security two notices of his bankruptcy filing in
8 October 2020 when they asked for income verification. Social Security continued to pay him
9 monthly until January, 2023.

10 Debtor did not find out that Social Security was trying to recoup his overpayment until his
11 Social Security payment for January 2023 was not deposited. Debtor went to the Social Security
12 office in Everett, Washington and showed them his discharge order, but was told that Creditor would
13 not accept the bankruptcy discharge because the notice they sent about the pre-petition overpayment
14 was mailed after he received his discharge. On February 14, 2023 Debtor received a letter from
15 Social Security they would withhold \$1,893.00 from his monthly benefits. See Exhibit "A"
16 Declaration of Darrin Lenald Cooper.

17 On January 25, 2023 Counsel faxed and mailed the debtor's discharge order and a letter
18 stating that even debts that are not listed in a no-asset Chapter 7 bankruptcy are discharged to the
19 creditor. Counsel for the debtor contacted the Everett, Washington Social Security office on January
20 31, 2023 and was told that since Social Security was not listed as a creditor on the original filing,
21 they would not acknowledge the discharge and would continue to recoup the pre-petition
22 overpayment from Debtor's current Social Security payments despite the bankruptcy discharge. See
23 Exhibit "B" Declaration of Counsel

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LAW AND ARGUMENT

The Social Security Administration argues that they can recoup Debtor's pre-petition overpayment because they were not listed as a creditor in his bankruptcy and that they sent the notice of the overpayment after Debtor's bankruptcy was filed. However, debts owed to creditors in a no-asset Chapter 7 case are still discharged even when they are not listed in a debtor's schedules because there is no deadline to file a proof of claim. See *Beezley v. California Land Title Co. (In re Beezley)*, 994 F.2d 1433, 1440-41 (9th Cir. 1993) and *White v. Nielsen (In re Nielsen)*, 383 F.3d 922, 925 (9th Cir. 2004). Therefore, the overpayment Debtor owed to Social Security was discharged even though Social Security was not properly served.

Further, the Social Security Program Operations Manual Systems GN 02215.230 (A)(2)(a) states that:

"If the bankruptcy court issues a discharge order, it will generally discharge all debts that arose prior to date of filing of the bankruptcy petition as discussed in GN 02215.185C.1.). This includes any penalty assessed due to work and earnings.

If the debtor did not list SSA as a creditor in the bankruptcy petition, in a "no assets" case, such unlisted debts are discharged."

Nowhere in the bankruptcy code does it say that pre-petition debts are not discharged if the creditor notifies the debtor of the debt after the bankruptcy is filed. Such a rule would essentially nullify the Bankruptcy Code.

In this case, Debtor did not list the overpayment in his no-asset Chapter 7 bankruptcy. Debtor subsequently sent Social Security notice of his bankruptcy discharge twice in 2020 and once in January, 2023. Even if Debtor had not notified Social Security of his filing, debts that are unlisted in a no-asset Chapter 7 bankruptcy are discharged. In refusing to accept the discharge and refusing

1 to pay the Debtor his monthly Social Security payment in an effort to recoup his discharged
2 overpayment, Creditor has violated the bankruptcy discharge order under 11 U.S.C. §524(a)(2).

3 Under Section 524(a)(2), a discharge order creates a statutory injunction that bars pre-
4 petition creditors from any "act, to collect . . . any debt as a personal liability of the debtor . . ." 11
5 U.S.C. §524(a)(2). Creditors who violate the discharge injunction may be held in civil contempt if
6 there is no objectively reasonable basis for concluding that their conduct might be lawful. See
7 *Taggart v. Lorenzen*, 139 S.Ct. 1795, 1801 (2019).

9 The creditor's subjective intent or good faith belief does not bar a finding of civil contempt,
10 but may be considered in determining the appropriate sanctions. *Id.* at 1802. A creditor who violates a
11 discharge order may be held in civil contempt if there is no "fair ground of doubt" as to whether their
12 actions were lawful under the discharge order. *Id.* at 1804. When creditors are found in civil
13 contempt for violating the discharge injunction, sanctions can include actual damages and attorney's
14 fees and costs. *Id.* at 1193.

16 Here, Creditor had no fair ground of doubt when they violated the discharge injunction
17 because their own operating manual clearly stated that debts owed to the Social Security
18 Administration are discharged in a no-asset Chapter 7 bankruptcy even if they are not listed in the
19 Schedules.

21 In this case, Creditor was given notice of Debtor's bankruptcy discharge, but still withheld
22 Debtor's January benefit payment in order to recoup an overpayment despite that discharge. Upon
23 notice that even unlisted unsecured non-priority debts are discharged in a no-asset Chapter 7 case,
24 Creditor still refused to honor the discharge injunction, denying Debtor the relief that the Bankruptcy
25 Code entitles him to. This refusal caused Debtor's Counsel hours of unnecessary work, amounting to
26 \$1015.84.
27

1 **WHEREFORE**, Debtor respectfully moves this Honorable Court for an Order, *inter alia*:

- 2 a. holding Creditors in contempt of this Court for violating the discharge injunction
3 provision(s) of 11 U.S.C. § 524(a),
4
5 b. awarding to Debtor and against Creditors the costs, fees and expenses of this litigation;
6 and
7 c. awarding such other and further relief as this Honorable Court deems appropriate.

8
9 Respectfully Submitted,

10
11 /s/Rachel Edmiston
12 Rachel Edmiston (43684)
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14 3400 188th St. SW STE 565
15 Lynnwood, WA 98037
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17 (425) 409-2745
18 (425) 491-7178 (fax)

19 **CERTIFICATE OF SERVICE**

20 I certify that on February 15, 2023, a true and correct copy of the motion was served:

21 Via the court's Electronic Case Filing System on these entities and individuals who are listed on the
22 court's Electronic Mail Notice List.

23 **Chapter 7 Trustee:**

24 Michael P. Klein at trusteeklein@hotmail.com

25 And by regular U.S. mail, postage prepaid on:

26 US Attorney General
27 U.S. Department of Justice
28 950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

United States Attorney's Office _____

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1 700 Stewart St
2 Suite 5220
3 Seattle, WA 98101-1271

4 **Debtor:**

5 Darrin L. Cooper, 5609 105th Pl SW, Mukilteo, WA 98275

6 **Creditor:**

7 The Social Security Administration
8 Western Program Service Center
9 PO Box 2000
10 Richmond, CA 94802-1791

11 The Social Security Administration
12 Office of Public Inquiries and Communications Support
13 1100 West High Rise
14 6401 Security Blvd.
15 Baltimore, MD 21235

16 2/15/2023
17 Date

18 /s/Rachel Edmiston
19 Rachel Edmiston (#43684)
20 Curtis, Casteel & Palmer, PLLC

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